

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)))))	CG Docket No. 03-123
Petition for Rulemaking to Mandate Captioned Telephone		

**COMMENTS OF MCI, INC.
IN OPPOSITION TO PETITION FOR RULEMAKING**

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December 30, 2005

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Petitioners correctly note that Captioned Telephone Relay Service (“Captioned Telephone”), which allows users to view captions of spoken words from the other party in almost real time, is a valuable service that should be made widely available.¹

However, the Commission should not initiate a rulemaking to explore mandating Captioned Telephone nationwide, as sought by Petitioners. As an initial matter, there is no need to mandate provision of this service in every state. Although Captioned Telephone is fairly new technology, just over two years after it was approved by the Commission for reimbursement under the Telecommunications Relay Service (“TRS”) fund, it already has been made available in thirty-three states, and is being considered for adoption by several other states’ TRS programs. Furthermore, as Petitioners point out, Captioned Telephone currently is available from only one company, Ultratec, using

¹ Self Help for Hard of Hearing People, *et al*, *Pet’n for Rulemaking to Mandate Captioned Telephone and Approve IP Captioned Telephone Relay Service*, CG Docket No. 03-123 (filed Oct. 31, 2005) (“Petition”).

proprietary equipment and technology that no other provider has been able to offer. MCI has been unable to license this technology from Ultratec at commercially reasonable terms, and on some instances Ultratec has refused to license the technology to MCI at all, stating that it lacked the necessary capacity to do so. The Commission should not mandate a service that may not be available in all states, or to all TRS providers.

MCI therefore opposes Petitioners' request to initiate a rulemaking proceeding.² If the Commission nonetheless does initiate a rulemaking proceeding, it should seek comment on whether it is appropriate to mandate a service that is currently available only through a single company. It also should seek further comment on whether Ultratec has the capacity to provide service nationwide, and what assurances exist that the company will be willing to provide the service to all TRS providers on reasonable terms and conditions.

I. THE COMMISSION SHOULD NOT INITIATE A RULEMAKING PROCEEDING ON WHETHER TO MANDATE CAPTIONED TELEPHONE

A. There Is No Need To Mandate Service That Is Already Being Widely Deployed In A Majority of States

The Commission may grant a request to initiate a rulemaking proceeding if "the petition discloses sufficient reasons in support of the action requested to justify the imposition of a rulemaking proceeding." 47 C.F.R. § 1.407 (2004). However, a rulemaking is not justified here, because there is no evidence that Commission action is necessary to foster broader deployment of Captioned Telephone. Captioned Telephone

² The Petition also seeks approval of IP Captioned Telephone relay service as eligible for reimbursement through the Interstate Telecommunications Relay Service Fund. MCI takes no position herein on this request.

currently is available in thirty-three states.³ In addition, according to Ultratec's website, "CapTel service is scheduled to be added to numerous states throughout the year."⁴ For example, Petitioners note that Captioned Telephone will be available in New Jersey in early 2006. Petition at 9. In addition, MCI's understanding is that Arizona, which is not listed in the Petition, will require the provision of Captioned Telephone when it seeks bids in 2006 for a new contract to provide TRS in the state.

The service is clearly in demand from the user community, and states – as well as providers of TRS services – seek to meet that demand. In fact, Petitioners list only three states – Massachusetts, New York, and Washington – that have affirmatively decided *not* to make the service available.⁵ With regard to Massachusetts, Petitioners state that Captioned Telephone is not available because state law requires that TRS call centers serving Massachusetts residents be located in Massachusetts, and Ultratec's call center is located in Wisconsin.⁶ However, Petitioners suggest that Captioned Telephone may nonetheless be able to be provided in Massachusetts, as has been done in Virginia,

³ Petition at 9 & n.3. According to Ultratec's CapTel website, some level of captioned telephone service is already being provided in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, and Wyoming. *See* States Providing CapTel Service, available at <http://www.captionedtelephone.com/availability.phtml> (accessed December 28, 2005).

⁴ *See* States Providing CapTel Service, available at <http://www.captionedtelephone.com/availability.phtml> (accessed December 28, 2005).

⁵ Petition at 17-18. Although Petitioners state that "[i]t is reported that . . . [t]he NY PSC has stated that it will not add captioned telephone until it is mandated by the FCC," Petition at 18, MCI has been unable to locate any such reports to determine whether that is the case or what basis the NY Public Service Commission might have had for coming to such a decision.

⁶ Petition at 17.

through contracting out for the service by an in-state provider. Petition at 17. It appears that Washington declined to fund Captioned Telephone due to budgetary constraints on state TRS funds. Petition at 18. To the extent that states have determined that Captioned Telephone is too expensive to provide at this time, they should be allowed to balance the benefits of this service against the needs of other TRS users. Particularly when there exists only one provider of Captioned Telephone, and there is no evidence that it is either willing or able to provide the service to all TRS providers in all states at rates that are reasonable, *see* Section I.B, *infra*, the Commission should not second-guess states' determination on this point. At the least, the Commission should allow deployment of Captioned Telephone to develop further before considering federal regulation.

B. The Commission Should Not Mandate Service When A Single Company Holds The Exclusive Rights To The Technology Necessary To Provide The Service

The Commission should also consider the fact that Ultratec holds the exclusive rights to the only version of Captioned Telephone currently available in the United States. MCI's understanding is that Ultratec has patented much of the technology that is used to provide the service. Petitioners acknowledge that the fact that there are no alternatives may be of concern to the Commission, stating that "the proprietary nature of this service should not prevent the FCC from mandating what is has called 'Captioned Telephone VCO service.'" Petition at 20. Petitioners argue that if Captioned Telephone is mandated, other companies will be motivated to offer competing products. Petitioners offer no support for that assertion, and the fact that no other companies have entered into the market when Captioned Telephone is provided in thirty-three states gives at least some indication that increasing the size of the market will not automatically result in

more competition. MCI is not aware of any companies that are close to offering competing products. Thus, were the Commission to mandate Captioned Telephone, it would, at least for the present time, be requiring states and providers to obtain service from one company.

Petitioners argue that although Ultratec has no competition for Captioned Telephone, it “has laid the groundwork for a competitive Captioned Telephone environment” by licensing the service to providers. Petition at 21. However, the flaw in this line of reasoning is that Ultratec is not a direct party to the competition between TRS providers. Although all TRS providers must compete for the opportunity to provide Captioned Telephone, as the sole provider of Captioned Telephone, Ultratec has no such competition. Thus, if the Commission were to mandate such service, there is no guarantee Ultratec would make the service available to all TRS providers at commercially reasonable terms and conditions. Indeed, if TRS providers were *required* to provide Captioned Telephone service in order to receive other TRS funding, this could create incentives for Ultratec to increase the price of its service, since it would know that providers would have no option but to pay whatever price it demanded. This could lead to an increase in the cost not just of Captioned Telephone, but also of other telecommunications relay services, as providers would have to factor in the cost of Captioned Telephone when bidding on state TRS contracts.

With a single provider, there may also be problems with availability and service quality. For example, Ultratec has previously refused to license Captioned Telephone service to MCI, based on its assertion that it did not have sufficient capacity. The Commission should not mandate provision of a service when there is no evidence that

Ultratec would be able to provide sufficient capacity to meet a national mandate. Even if Ultratec is capable of provisioning Captioned Telephone to the entire country, if its resources are stretched too thin, there is no evidence that a high level of service quality could be maintained.

II. IF THE COMMISSION NEVERTHELESS INSTITUTES A RULEMAKING PROCEEDING, IT SHOULD SEEK COMMENT ON WHETHER IT IS APPROPRIATE TO MANDATE A SERVICE THAT IS CURRENTLY AVAILABLE THROUGH ONLY A SINGLE COMPANY

If the Commission decides to initiate a rulemaking proceeding, which it should not, it should seek comment on whether it is appropriate to mandate Captioned Telephone when it is available through only a single company. As discussed above, this should include considerations such as whether Ultratec has the capacity to make the service available throughout the country while maintaining service quality. The Commission should also seek comment on how it could ensure that the service would be made available to all TRS providers at commercially reasonable rates and terms.

III. CONCLUSION

The Commission should not initiate a rulemaking proceeding to mandate that TRS providers offer Captioned Telephone.

Respectfully submitted,

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December 30, 2005

CERTIFICATE OF SERVICE

I, John R. Delmore, hereby certify that on this 30th day of December, 2005, copies of the foregoing were served by electronic mail, unless otherwise noted, on the following:

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